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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,192	08/21/2003	Nathan Myron Denkin	Denkin 16-8 (LCNT/125589)	7076
46363	7590	08/23/2005	EXAMINER	
MOSER, PATTERSON & SHERIDAN, LLP/ LUCENT TECHNOLOGIES, INC 595 SHREWSBURY AVENUE SHREWSBURY, NJ 07702			HELLNER, MARK	
			ART UNIT	PAPER NUMBER
			3663	

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/645,192	DENKIN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mark Hellner	3663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,7,8,10-17,21 and 27-30 is/are rejected.
- 7) ☒ Claim(s) 4,6,9,18-20 and 22-26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 5, 7, 8, 10 –14, 21, 27, 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Hayashi et al.

Hayashi et al disclose a device for controlling gain tilt in an optical amplifier comprising: means (5-6 and 5-7) for determining a first spectral profile on an input WDM signal; means (5-8 and 5-9) for filtering the WDM signal to produce a signal having a spectral profile; means (8) for determining the loss between the input WDM signal and the filtered WDM signal in order to adjust the gain of optical amplifying means (1) in a manner that keeps the average power of each channel in the WDM signal constant.

Claim 1 reads on the method of operation of the structure recited above.

Claim 5 reads on the operation of the control input to pumping means (6-1, 6-2 and 6-3).

Claims 7 and 8 recite inherent properties of gain control.

Claim 10 reads on the structure applied to claim 1 because a filter and detector are inherent parts of the spectrum analyzers (5-8 and 5-9) disclosed by Hayashi et al.

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Claim 11 reads on the fiber connecting element (5-2) to element (5-6).

Claim 12 is taught by elements (5-6, 5-7, 5-8 and 5-9).

Claim 13 is taught by element (1).

Claim 14 is disclosed by the feedback to pump sources (6-1, 6-2 and 6-3).

Claim 21 is met by elements (5-8 and 5-9).

Claim 27 is taught by the operation of control circuit (8).

Claim 28 is taught by the structure applied to claim 1.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3, 15, 16, 17, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi et al.

Claims 2, 3, 29 and 30 would have been because the spectral profile detected by elements (5-8 and 5-9) would have been a function of the tilt of the WDM signals input to the amplifier. The tilt of these signals would either have been linear increasing or linear decreasing.

Claims 15-17 would have been obvious because the EDFAs (13-1 and 13-2) disclosed by Hayashi et al commonly have a pre-amp stage and a post-amp stage.

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Claims 4, 6, 9, 18-20 and 22-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication should be directed to Mark Hellner at telephone number 571 272 6981.

Mark Hellner

Primary Examiner

AU 3663

A handwritten signature in black ink that reads "Mark Hellner". The signature is written in a cursive style with a large, stylized "M" and "H".